

# **EXHIBIT H**

**K. Wyer Mar. 21, 2024, *Touhy*  
Letter**



U.S. Department of Justice  
Civil Division, Federal Programs Branch  
1100 L St, NW, Room 12014  
Washington, D.C. 20005

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March 21, 2024

VIA EMAIL

Michael Francisco  
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Re: ***Doe v. Mast*, No. 3:22-cv-49-NKM-JCH**

Michael,

In partial response to your *Touhy* requests of February 2 and 9, 2024, I have identified certain documents among those you transmitted that consist either of filings in the 2020 WD Va case, No. 3:20-cv-00009-NKM, or drafts exchanged between, or emails containing exchanges between, DOJ counsel and plaintiffs' counsel in the 2020 WD Va case (collectively, the "2020 WD Va Case Documents"). Although the 2020 WD Va Case Documents do not implicate *Touhy* requirements, the Department of State and the Department of Defense, as Defendants in the 2020 WD Va case, have concerns regarding the production of certain of these documents in the 2022 case because they are under seal. As far as I am aware, the Masts have not received permission from the Court in the 2020 WD Va case to share sealed versions of any of the filings or transcripts in that case with non-parties. Moreover, the Court approved the sealing of certain filings in that case—in particular ECF No. 4 exhibits K, P, and X—in their entirety at the Defendants' request, and it approved other redactions requested by Defendants in ECF 4 Exhibits L and N, and ECF 5.

To the best of my ability, I have compared the 2020 WD Va Case Documents you transmitted with the publicly available versions, if any, on the docket of that case. Based on that comparison, the 2020 WD Va Case Documents you transmitted should be handled as follows:

- The following document should not be produced because it is under seal in its entirety in the 2020 WD Va case. Even aside from that restriction, any production of this or other versions of this document must be limited to a version authorized by the Department of Defense, to be further detailed in future communications responding to your request.
  - MAST\_TOUHY\_004805 (ECF 4 exhibit P)
- To the extent you believe you may acknowledge that the Masts were the petitioners in the 2020 WD Va case without first obtaining the Court's authorization to do so, the

following documents should be produced only with redactions that match the public versions of the documents. Alternatively, if you believe you somehow have authorization to share sealed versions of these documents with the parties to the 2022 case, the sealed versions should at least be designated Confidential under the Protective Order in the case and any filing of such material should be under seal. Aside from the fact that the documents identified below are in part sealed, the United States has no objection to their production.

- MAST\_TOUHY\_004598 (public version ECF 29-6)
  - MAST\_TOUHY\_004604 (public version ECF 29-2)
  - MAST\_TOUHY\_004627 (public version ECF 29-7)
  - MAST\_TOUHY\_004638 (public version ECF 29-8)
  - MAST\_TOUHY\_004669 (no public version)
  - MAST\_TOUHY\_004675 (public version ECF 25-19)
  - MAST\_TOUHY\_004680 (public version ECF 27-1)
  - MAST\_TOUHY\_004693 (public version of final draft appears at ECF 25-19)
  - MAST\_TOUHY\_004698 (public version ECF 27-1)
  - MAST\_TOUHY\_004709 (public version ECF 25-19)
  - MAST\_TOUHY\_004718 (no public version)
  - MAST\_TOUHY\_004724 (no public version)
  - MAST\_TOUHY\_004734 (public version of final draft appears at ECF 25-19)
  - MAST\_TOUHY\_004739 (public version ECF 27-1)
  - MAST\_TOUHY\_004763 (public version ECF 25-2)
  - MAST\_TOUHY\_004766 (public version ECF 25-14)
  - MAST\_TOUHY\_004770 (public version ECF 29-4)
  - MAST\_TOUHY\_004780 (public version ECF 25-13)
  - MAST\_TOUHY\_004781 (public version ECF 29-5)
  - MAST\_TOUHY\_004793 (public version ECF 25-14)
  - MAST\_TOUHY\_004795 (public version ECF 29-6)
  - MAST\_TOUHY\_004801 (public version ECF 25-15)
  - MAST\_TOUHY\_006032 (public version of final draft appears at ECF 25-19)
  - MAST\_TOUHY\_006037 (public version ECF 27-1)
- The following documents may be produced without further redaction because they are identical or nearly identical to public versions:
  - MAST\_TOUHY\_004756 (public version of final chart appears at ECF 25)
  - MAST\_TOUHY\_004671 (public version ECF 22)
  - MAST\_TOUHY\_004703 (public version ECF 22)
  - MAST\_TOUHY\_004714 (public version ECF 22)
  - MAST\_TOUHY\_004720 (public version ECF 22)
  - MAST\_TOUHY\_004744 (public version ECF 22)
  - MAST\_TOUHY\_006042 (public version ECF 22)
- The following documents may be produced without further redaction because they consist of unfiled correspondence or drafts:
  - MAST\_TOUHY\_004665
  - MAST\_TOUHY\_004685
  - MAST\_TOUHY\_004690

- 3 -

- MAST\_TOUHY\_004707
- MAST\_TOUHY\_004726
- MAST\_TOUHY\_004731
- MAST\_TOUHY\_004748
- MAST\_TOUHY\_004754
- MAST\_TOUHY\_006024
- MAST\_TOUHY\_006029

Given the United States' interests based on the status of the State Department and DoD as Defendants in the 2020 case, I would appreciate your response regarding how you intend to handle the first two categories of documents.

Sincerely,

/s/

Kathryn Wyer